

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
HAL AND JULIE MITNICK	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1984.	:	

Petitioners, Hal and Julie Mitnick, 60 East End Avenue, Apt. 7B, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1984 (File No. 805672).

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on February 8, 1990 at 9:15 A.M., with all briefs due by April 23, 1990. Petitioners appeared by Kenneth Mersel, C.P.A. The Division of Taxation appeared by William F. Collins, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly denied petitioners' claimed investment tax credit on their lease of medical diagnostic imaging equipment.

FINDINGS OF FACT

Petitioners, Hal and Julie Mitnick, filed a joint New York State personal income tax return for 1984. On the return, petitioners claimed an investment tax credit of \$10,864.00.

Petitioners claimed the investment tax credit in question on the lease of medical diagnostic imaging equipment that is used to produce X-rays. Petitioner Julie Mitnick, M.D., a sole proprietor, is a specialist in radiology. In 1984 Dr. Mitnick leased plain film and IVP processing equipment from the General Electric Company and mammography diagnostic equipment from Philips Medical Systems, Inc. Both units were installed and in operation in

1984.

On March 11, 1988, the Division of Taxation issued to petitioners a Notice of Deficiency for 1984 which asserted personal income tax due of \$10,862.34 plus interest. The notice of deficiency resulted from the Division's disallowance of the investment tax credit claimed by petitioners on the medical diagnostic imaging equipment.¹ The investment tax credit was denied by the Division on the basis that the X-ray equipment was not used to produce goods by manufacturing or processing.

CONCLUSIONS OF LAW

A. During the year at issue former section 606(a)(2) of the Tax Law provided, in pertinent part, as follows:

"A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code or recovery property with respect to which a deduction is allowable under section one hundred sixty-eight of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are principally used by the taxpayer in the production of goods by manufacturing, processing, assembling...."

At the hearing, the Division of Taxation did not challenge the claimed investment tax credit on the grounds that the equipment at issue was not depreciable or recovery property, did not have a useful life of four years or more, was not purchased within the meaning of the internal revenue code or did not have a situs in New York State. The only grounds for denial raised by the Division at the hearing were that the equipment was not acquired in the year at issue and was not used to produce goods by manufacturing or processing. Therefore, only these two issues will be addressed in this determination.

B. Section 606(a)(2) defined the term "manufacturing" as:

"the process of working raw materials into wares suitable for use or which gives

¹The \$1.66 difference between the amount claimed as the investment tax credit and the amount disallowed appears to be the result of the rounding off of figures in the computation of tax due. The difference has no effect on this determination.

new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment."

The personal income tax regulations at 20 NYCRR 103.1(d) defines the term "principally used" as more than 50 percent.

The term "processing", while not defined in the statutory provision or regulation here at issue, is defined at 20 NYCRR 527.4(d) (a sales and use tax regulation) as "the performance of any service on tangible personal property for the owner which effects a change in the nature, shape or form of the property." The former Tax Commission has held that such definition is applicable to investment tax credit determinations made under section 210(12)(b)² of the Tax Law (see, Matter of Continental Terminals,

State Tax Commission, March 5, 1982). Furthermore, the Tax Commission has defined processing as "an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or alters its form, state or condition" (Matter of Multimode, Inc., State Tax Commission, May 20, 1983).

C. The sales and use tax regulations (20 NYCRR 527.4[d]) include within the term "processing" (1) the development of film by a photographic laboratory; and (2) cutting, editing, sound dubbing and the addition of titles to convert exposed and developed film footage into a completed film. Similarly, the creation of television films and video tapes, as well as radio tapes, effects changes in the nature, qualities or conditions of such films and tapes, and therefore falls within the definition of "processing". In addition, the production of master movie prints and the production of master sound tapes qualify for the investment tax credit under Internal Revenue Code §§ 38, 46-48 (see, EMI North America Holdings, Inc. v. United States, 675 F2d 1068; Bing Crosby Productions, Inc. v. United States, 588 F2d 1293; Walt Disney Productions v. United States, 549 F2d 576).

²The investment tax credit for corporate franchise tax and personal income tax is administered similarly by the Division (see, TSB-M-78[1]C).

D. The Department of Taxation and Finance, in an advisory opinion containing similar facts, held that diagnostic imaging equipment which produces X-rays, ultrasound images and computerized scans onto X-ray film qualifies for the investment tax credit of section 606(a)(2) of the Tax Law (TSB-A-88[10]I).

E. The diagnostic equipment acquired by petitioner Julie Mitnick in 1984 is used to produce X-rays and related diagnostic information on X-ray film. The creation of such films are similar to the production of video tapes, radio tapes and television films and the development of film by a photographic laboratory. Therefore, petitioners' diagnostic equipment, which is principally used in the production of the X-ray films, constitutes property used in the production of goods by manufacturing and processing, within the meaning and intent of section 606(a)(2) of the Tax Law.

F. The petition of Hal and Julie Mitnick is granted and the Notice of Deficiency, dated March 11, 1988, is cancelled.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE